

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

DESHAWN BROWN,

Petitioner,

Case Number: 2:07-CV-11683

v.

HON. LAWRENCE P. ZATKOFF

CINDI CURTIN,

Respondent.

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**OPINION AND ORDER**

Petitioner Deshawn Brown is currently incarcerated at the Kinross Correctional Facility in Kincheloe, Michigan. He previously filed a *pro se* petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2254, challenging his convictions for second-degree murder, felon in possession of a firearm, and possession of a firearm during the commission of a felony. The Court denied the petition in an Opinion and Order dated December 11, 2008, wherein the Court also denied a certificate of appealability. The Court entered a Judgment dismissing Petitioner's petition on the same day. Petitioner filed a timely notice of appeal, but on July 21, 2009, the Sixth Circuit Court of Appeals issued an order denying a certificate of appeal.

Petitioner has now filed a Motion for Relief from Judgment pursuant to Fed. R. Civ. P. 60(b)(4) (Docket #21). Rule 60(b)(4) provides:

On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

\* \* \* \* \*

(4) the judgment is void; . . .

In the Motion for Relief from Judgment, Petitioner asserts that the Court's December 11, 2008, judgment is void *ab initio* and seeks to have the Court reopen his habeas corpus proceedings.

Although the Court has reviewed and considered the arguments set forth by Petitioner in his Motion for Relief from Judgment, the Court is not persuaded that the arguments or the authority set forth therein afford Petitioner the relief he seeks.<sup>1</sup> Rather, for the reasons stated in the Court's December 11, 2008, Opinion and Order, as well as for the reasons set forth in the Sixth Circuit's July 21, 2009, Order denying a certificate of appealability, the Court finds that Petitioner's Motion for Relief from Judgment must be denied. The Court also concludes that reasonable jurists would not debate the Court's conclusion that the issues raised in Petitioner's Motion for Relief from Judgment present a claim upon which habeas relief may be warranted. Therefore, the Court again denies a certificate of appealability.

Accordingly, for the reasons set forth above, the Court hereby ORDERS that Petitioner's Motion for Relief from Judgment (Docket #21) is DENIED. IT IS FURTHER ORDERED that a certificate of appealability is DENIED.

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<sup>1</sup>The Court also would deny the Motion for Relief from Judgment because it was untimely filed. Although an exact time frame within which a Rule 60(b)(4) motion must be filed, it must be filed "within a reasonable time." Fed.R.Civ.P. 60(c)(1). Here, even though Petitioner does not cite a case or any authority decided or issued less than two years prior to the date the Court entered Judgment, Petitioner did not file his Motion for Relief from Judgment until almost two years after the Court entered Judgment. The Court concludes that, under the circumstances of this case, the 22 month period between Judgment and the filing of the Motion for Relief from Judgment is unreasonable.

IT IS SO ORDERED.

s/Lawrence P. Zatkoff  
LAWRENCE P. ZATKOFF  
UNITED STATES DISTRICT JUDGE

Dated: March 31, 2011

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this Order was served upon the attorneys of record by electronic or U.S. mail on March 31, 2011.

s/Marie E. Verlinde  
Case Manager  
(810) 984-3290